

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

76-
~~75~~-7058

To be argued by
BENEDICT GINSBERG

In The
United States Court of Appeals
For The Second Circuit

CY SEYMOUR,

Plaintiff-Appellee.

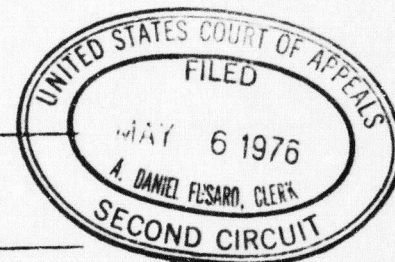
v.s.

BACHE and COMPANY, Incorporated, and ALEX CANAAN,

Defendants-Appellants.

**REPLY BRIEF FOR
DEFENDANT-APPELLANT**

BENEDICT GINSBERG
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475 Fifth Avenue
New York, New York 10017
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x

CY SEYMOUR,

Plaintiff-Appellee,

-against-

Docket NO.:
76-7058

BACHE & CO., INC. and ALEX CANAAN,

Defendants-Appellants.

-----x

REPLY BRIEF ON BEHALF OF
APPELLANT BACHE & CO., INC.

POINT I

THE PLAINTIFF FAILED TO
ALLEGE ANY FACTS TO SUS-
TAIN ITS POSITION

The argument of plaintiff's counsel, in support of the decision below, states, without basis, that the plaintiff, in some unspecified way, was ignorant of trades in his account. In fact, however, the papers below do not justify such a position. Nowhere in the Record is there a factual allegation to form the basis for a conclusion that the plaintiff

was ignorant of anything regarding his account.

The status of the Record is that the plaintiff signed an agreement to arbitrate one year after the six hundred and twenty trades of which he complains of had occurred. There are no other facts alleged.

In light of the plaintiff's failure to allege facts on any subject, the sole issue on this appeal is whether or not a stockbroker's demand for arbitration of disputes with a customer, must be denied, under all circumstances.

It is the position of the defendant Bache that an agreement to arbitrate is enforceable when the plaintiff fails to allege any facts to justify refusing to enforce the agreement. It is also the contention of defendant Bache that the fact that the plaintiff signed an arbitration agreement one year after the last of the alleged wrongful acts occurred and almost four years after the first of the alleged wrongful acts occurred, requires the conclusion that the plaintiff signed the arbitration agreement with sufficient knowledge of the acts complained of, to be deemed to have agreed to arbitrate any dispute based on those acts. Even assuming, arguendo that the acts were

wrongful, it is also clear that the plaintiff ratified and approved the acts or is guilty of laches. It should be noted however, that Bache feels and believes it will prove, that the trades made for plaintiff's account, and of which he now complains, were made at his prior request.

POINT II

THE PLAINTIFF HAS FAILED TO
ALLEGE FACTS TO SUSTAIN THE
CONTENTION THAT THE CLAIM AGAIN-
ST CANAAN IS NOT ARBITRABLE

The Record below discloses no basis for the Court's conclusion that the claim against the defendant Canaan is not arbitrable before The New York Stock Exchange. If the plaintiff arbitrates this claim against the defendant Bache, The New York Stock Exchange Inc. will include the defendant Canaan as a party respondent if the parties so consent. The attorney for the defendant Canaan has stated that he would not withhold consent to such arbitration, and therefore, the claim asserted herein would be adjudicated against both Bache and Canaan in one arbitration proceeding.

CONCLUSION

The plaintiff has failed to allege facts to sustain the statements in his answering brief, or to sustain the decision below, and it is respectfully requested that the parties be directed to adjudicate their claims before the arbitration department of The New York Stock Exchange Inc.

BENEDICT GINSBERG
Attorney for Defendant-Applicant.
Bache & Co., Inc.

With him on the Brief
CHARLES E. RAMOS

Cy Seymour,
Plaintiff - Appellee,
- against -
Boche & Co.,
Defendant - Appellant

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Reuben A. Shearer being duly sworn,
depose and say that deponent is not a party to the action, over 18 years of age and resides at
211 West 144th Street, New York, New York 10030
That on the 6 day of May 1976 at 1) 600 Madison Avenue, New York, New York
2) 225 Broadway, New York, New York
deponent served the annexed Reply Brief upon
1) Paul R. Scott
2) Lipkin & Weisberg
the Attorneys in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 6
day of May 1976

Robert T. Brin

Reuben Shearer
Reuben Shearer

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977